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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

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<b>2003 Assembly Bill 152</b>	<b>Assembly Substitute Amendment 1, as Amended by Assembly Amendments 1, 2, 3, and 4</b>
<i>Memo published: October 27, 2003</i>	<i>Contact: Philip G. Cardis, Staff Attorney (267-0683)</i>

*Assembly Bill 152* creates a board to investigate and make recommendations regarding inmate deaths.

*Assembly Substitute Amendment 1* creates the Inmate and Resident Mortality Board composed of 12 members and attached to DOC. The board is given authority to review circumstances of the death of a person who is in the custody of DOC and who is an inmate in an in-state or out-of-state correctional institution, a county jail, or a house of corrections, or who is a resident of a secured correctional facility. Under the substitute amendment, within three business days after the death of an inmate or resident, DOC must send a written notice to each member of the board of the death, and provide them with a summary of information regarding the death, including the date, time, and place of the death. DOC is also required to provide the board, at its next scheduled meeting, with the records that are in the custody of DOC regarding the person who died and with any information obtained as the result of DOC's internal review of the death.

The substitute amendment requires the coroner or medical examiner to also notify the attorney general of the death of a person in the custody of DOC who is in an institution if the death is one that would permit the district attorney to order an inquest.

Upon notification of the death of a person in DOC's custody, the district attorney may order and conduct an inquest. The substitute amendment also gives the attorney general the authority to order and conduct an inquest when notified of that death.

Under the substitute amendment, DOC is required to provide any assistance the board needs to review the circumstances of the death. The substitute amendment allows the board to review any medical records of the inmate or resident in the custody of a medical provider; with the approval of the district attorney or attorney general, medical records in the custody of a law enforcement agency;

information obtained by the coroner or medical examiner regarding the death; and information collected as a result of the autopsy.

The substitute amendment requires the board to issue a report of the board's review within 30 days after the meeting at which the board completes its review of the death and to submit that report to a relative of the deceased person; to the chair and the ranking minority member of the appropriate standing committees of the Assembly and Senate; to the Secretary of DOC; and to the district attorney or attorney general, if appropriate. The substitute amendment authorizes the board to make recommendations to DOC regarding medical and other prison procedures, including rules, based on the board's review of the death. If the board determines during its review of a person's death, that a medical provider failed to provide appropriate, proper, and necessary medical care, the board is required under the substitute amendment to prepare and forward a complaint to the appropriate credentialing board.

### **Summary of Major Changes in Assembly Substitute Amendment 1**

Assembly Substitute Amendment 1 makes the following major changes to Assembly Bill 152:

- Changes the title of the board from the "Prison Mortality and Morbidity Board" to the "Inmate and Resident Mortality Board."

#### ***Attorney General***

- Allows the attorney general, in addition to the district attorney, to order and conduct inquests of deaths.

#### ***Board Membership***

- Staggers the appointment of board members so that five are appointed for a four-year term; four are appointed for a three-year term; and three are appointed for a two-year term.
- Board membership appointed by the Governor includes two *physicians* from the University of Wisconsin Hospitals and Clinics Authority and two *physicians* from the Medical College of Wisconsin. In the original bill, two *representatives* of each of those entities is required.
- The Governor must appoint one *registered* nurse employed by a private health maintenance organization, one *registered nurse employed by a private hospital*, and one member who does not represent any of the foregoing entities and *who is not employed by a state agency*. In the original bill, one nurse employed by a state agency is a member of the board. Also, a nurse employed by a private hospital is not on the board in the original bill.
- The Secretary of DOC must appoint *a health care provider who is employed by DOC, and an employee of DOC who works in a correctional facility*. In the original bill, a registered nurse from a correctional institution and a correctional officer are members of the board.
- One member of the board must be a physician who is a pathologist with subspecialty training in forensic pathology and who is certified by the American Board of Pathology. In the bill, a licensed forensics pathologist must be appointed.

### ***Board Review***

- Grants the Inmate and Resident Mortality Board the authority to review circumstances of the death of a person who is in the custody of DOC and who is an inmate in an in-state or out-of-state correctional institution, a county jail, or a house of corrections, and of juveniles in secured correctional facilities. In the original bill, the board has the authority to investigate only the deaths of inmates in state correctional institutions.
- Requires DOC to send *written* notice to each member of the board of the death within *three "business" days* after the death of an inmate or resident, and provide them with a summary of information regarding the death, including the date, time, and place of the death. In the original bill, DOC is required to notify each member of the board of the death within 72 hours, and provide them with all of the information available to DOC regarding the death.
- DOC must provide the board with the records that are in the custody of DOC regarding the person who died and with any information obtained as the result of DOC's internal review of the death at the board's *next scheduled meeting*.
- Allows the board to review a law enforcement agency's medical records relating to the inmate or resident only *with the approval of the district attorney or attorney general*.
- Allows board members to disqualify themselves from any discussion regarding a specific death if they determine that they cannot act in an impartial manner regarding that death.
- Removes the board's authority to ask a court to subpoena documents related to the death, to order an autopsy, and to request the district attorney or court to order an inquest into the inmate's death.

### ***Board's Report and Submittal to Certain Persons***

- Requires the board to issue a report of the board's review *within 30 days after the meeting at which the board completes its review of the death* and to submit that report to a relative of the deceased person; to the chair and the ranking minority member of the appropriate standing committees of the Assembly and Senate; to the Secretary of DOC, and to the district attorney or attorney general, if appropriate. In the bill, the board is not required to issue a report in a specified amount of time.
- Allows the board to refer concerns or recommendations to DOC relating to the performance or work rule violations regarding staff who did not follow departmental policies or procedures relating to the circumstances surrounding the death. In the bill, the board may make recommendations to DOC regarding *possible disciplinary action against staff* who did not follow departmental policies or procedures relating to the death.

### **Assembly Amendment 1 to Assembly Substitute Amendment 1**

Assembly Amendment 1 modifies board membership appointed by the Secretary of DOC relating to correctional officers.

Under Assembly Amendment 1, the Secretary shall appoint a “correctional officer who shall be from a list provided to the secretary by the labor organization recognized or certified to represent the employees in the collective bargaining unit that represents correctional officers.”

**Assembly Amendment 2 to Assembly Substitute Amendment 1**

Amends the substitute amendment in the following manner:

- Removes language requiring the inmate and resident mortality board to meet at least four times each year and at other times on the call of the chair or a majority of the board’s members.
- Specifies that members of the inmate and resident mortality board may not receive reimbursement for air travel.

**Assembly Amendment 3 to Assembly Substitute Amendment 1**

Amends the substitute amendment on page 3, lines 13 and 15 (relating to board membership), to delete “Hospitals and Clinics Authority” and substitute “Medical School.”

**Assembly Amendment 4 to Assembly Substitute Amendment 1**

Amends the substitute amendment relating to the board’s review of a death, if there is a criminal investigation of an inmate’s or resident’s death. The amendment provides that the board may not issue a final report regarding the board’s review of an inmate’s or resident’s death until after that criminal investigation is completed. Any report issued before completion of the criminal investigation is deemed preliminary and is subject to modification based on information received as a result of the criminal investigation.

**Legislative History**

On September 10, 2003, the Assembly Committee on Corrections and the Courts introduced Assembly Substitute Amendment 1 and Assembly Amendment 1 by unanimous consent. The Assembly Committee on Corrections and the Courts recommended Assembly Substitute Amendment 1, as amended by Assembly Amendment 1, for adoption and passage of the bill, as amended, by a vote of Ayes, 9; Noes, 2.

On October 21, 2003, the Assembly adopted Assembly Amendments 2, 3, and 4 to Assembly Substitute Amendment 1 by a voice vote. On October 23, 2003, the Assembly passed Assembly Substitute Amendment 1, as amended, by a voice vote.

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